

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KENNETH WRIGHT,	:	CIVIL ACTION
Petitioner	:	
	:	
v.	:	NO. 09-02093
	:	
MICHAEL D. KLOPOTOSKI, et al.,	:	
Respondents	:	

ORDER

AND NOW, this 1st day of November, 2010, upon careful and independent consideration of the petition for writ of habeas corpus, and after review of the thorough and well-reasoned Report and Recommendation of United States Magistrate Judge Elizabeth T. Hey, it is hereby ORDERED that:

1. The petitioner's objections are OVERRULED;¹
2. The Report and Recommendation is APPROVED and ADOPTED;
3. The petition for writ of habeas corpus is DENIED with prejudice;
4. There is no probable cause to issue a certificate of appealability;
5. The Clerk of Court shall mark this case CLOSED for statistical purposes.

BY THE COURT:

/s/ LAWRENCE F. STENGEL
LAWRENCE F. STENGEL, J.

¹ Petitioner now argues that the statute of limitations should be equitably tolled because his state-appointed PCRA attorney misinformed him of his federal habeas filing deadline. "[A] garden variety claim of excusable neglect,' . . . such as a simple 'miscalculation' that leads a lawyer to miss a filing deadline, . . . does not warrant equitable tolling." Holland v. Florida, 130 S.Ct. 2549, 2564 (U.S. 2010) (internal citations omitted). Petitioner's objection regarding the statute of limitations is overruled.

In addition, petitioner's objections regarding Judge Hey's analysis of the merits of his ineffective assistance of counsel claim are overruled.